

Supreme Court of Kentucky

ORDER

IN RE: ORDER APPROVING LOCAL COURT RULES FOR THE 12th JUDICIAL DISTRICT, HENRY, OLDHAM AND TRIMBLE, DISTRICT COURTS

Upon recommendation of the Judges of the 12th Judicial District, Henry, Oldham and Trimble, District Courts; and being otherwise sufficiently advised,

The Court Rules for Henry, Oldham and Trimble, District Courts are hereby approved. This order shall be effective as of the date of this Order, and shall remain in effect until further orders of this court.

Entered this the 19th day of November 2008.


CHIEF JUSTICE

COURT RULES FOR THE 12TH JUDICIAL DISTRICT
HENRY, OLDHAM & TRIMBLE COUNTIES, KENTUCKY

I. CITATION OF RULES

These rules may be cited as "12th Judicial District Court Rules" or "12th JDCR."

II. ORGANIZATION

A. The District Court of the 12th Judicial District is a court of continuous session, and the court shall consist of two (2) divisions, namely: First Division and Second Division.

B. The causes in the district court shall be divided between the two (2) divisions as equally as possible as hereinafter provided by these rules.

C. The Judge of either division may preside and hear and determine any case or question in the other division when the Judge of that division is sick, absent from the county, or is otherwise unavailable.

D. After each cause has been assigned to a division, the Judge thereof may for any reason transfer it to the other division.

E. When two (2) or more actions, civil or criminal, have been filed that may, as a matter of right, or may, in the discretion of the Court be consolidated, and such action or actions are pending in the other division of the Court, any party to any of the actions may, with approval of the Court, have any of the actions transferred to that division of the Court in which the first of the actions was filed or assigned. The Judge of the Court may order such transfers to be made without a motion by any of the parties.

F. Causes in the District Court shall be assigned to the two (2) divisions as follows:

1. Probate – Probate, for purposes of these rules, means a matter assigned a "P" number by the District Clerk. All probate matters are assigned a case number. All odd-numbered cases shall be assigned to the First Division. All even-numbered cases shall be assigned to the Second Division.

2. Civil – Civil, for purposes of these rules, means any matter assigned a "C" case number by the District Clerk. All civil matters are assigned a case number. All odd-numbered cases, except forcible detainers, shall be assigned to the First Division. All even-numbered cases, except forcible detainers, shall be assigned to the Second Division.

3. Forcible Detainers shall be considered by the first available Judge and shall be assigned for further proceedings on dates and times thereafter which will expeditiously conclude the proceeding for all parties concerned, irrespective of which Judge may be presiding.

4. Criminal and Traffic – Criminal and traffic matters are any matters assigned an "F", "M", or a "T" case number by the District Clerk. All of these matters shall be assigned to the Judge and Division to which the defendant is first scheduled to appear and shall not be transferred to or docketed in the other division except by the direct approval of the transferring Judge.

5. Juvenile – Juvenile matters are any matters assigned a "J" case number by the District Clerk. All juvenile matters shall be assigned to the Judge and Division to which the child is first scheduled to appear and shall not be transferred to the other Division except by the direct approval of the transferring Judge.

6. Small Claims – Small Claims are any matters assigned an "S" case number by the District Clerk. All odd-numbered cases shall be assigned to the First Division. All even-numbered cases shall be assigned to the Second Division.

7. Adult Mental Health – Adult Mental Health matters are any matters assigned an "H" case number by the District Clerk. All adult mental health actions shall be considered by the first available Judge and shall be assigned for further proceedings on dates and times thereafter which will expeditiously conclude the proceeding for all parties concerned, irrespective of which Judge may be presiding.

G. All persons who are charged with criminal or traffic violations shall be bonded to appear, cited by peace officers to appear, or brought in custody from jail to appear before the court as provided by order of the Chief Judge of the District. A copy of said order or any subsequent amendment thereto, shall be sent to all clerks, jailers, local attorneys, and law enforcement agencies by the Chief Judge.

III. MOTION and MOTION DOCKET – Criminal

A. Appearance of Counsel and Defendant

1. Unless otherwise specifically required in the initial setting of bond, in all cases where Counsel has been retained or previously appointed, Counsel may appear on behalf of a defendant. The Court may require appearance at initial appearance as a condition when setting of the initial bond. At initial appearance or at any time thereafter, Counsel may request permission to appear on behalf of the defendant at later hearings or court dates.

2. In a felony case in District Court, absent permission of the Court granted only in extraordinary situations, the defendant must appear at all hearings after the initial appearance.

3. Any pleas of guilt entered by an attorney with authority from the defendant shall be in accordance with RCr 8.28.

B. Criminal Rules regarding Motions and Motion Docket

1. Written motions, other than those that may be heard ex parte, and notice of the hearing thereof, shall be personally delivered at least seven (7) days before the time specified for the hearing, unless a different period is fixed by the Rules of Civil Procedure, these Rules, any applicable statute, or by Court order.

2. Unless otherwise agreed in advance, any motion requiring an evidentiary hearing shall be initially noticed and set on a regularly scheduled criminal Court day before the appropriate Judge to hear the motion. Witnesses need not be present. The Court will schedule an appropriate date and time to hear the motion.

3. The Clerk shall keep a motion docket on which he/she shall docket in order, all motions assigned for hearing on each motion day, either by Court order or by notice duly served. This motion docket will be called on motion day and, unless otherwise ordered, the motions will be heard in the order docketed.

4. Juvenile Case – Any motions to be heard in juvenile matters shall be written and filed of record on or before seven (7) days prior to the date of the requested hearing with proper notice to all interested parties. In regard to those cases subject to KRS Chapter 640, any motion to transfer jurisdiction Filed by the Commonwealth must comply with the provisions of KRS 640.010.

IV. DISCOVERY

A. The 12th Judicial District maintains an "open file" discovery procedure. It is not necessary for Counsel for the Defendant to file a discovery motion to begin the discovery process. Counsel for the Defendant shall make necessary arrangements with the Commonwealth regarding any costs associated with providing discovery.

B. Additional and or Supplemental discovery may be requested using this same procedure and will be provided subject to agreement of the parties.

C. In the event that the defendant desires additional information not covered by the informal "open file" procedure and the Commonwealth is either not in agreement that the information is discoverable, or claims it is not discoverable from the Commonwealth or its agents, Counsel for the Defendant may file a formal discovery request to be heard by the Court.

D. While the Court favors the liberal discovery procedure outlined herein, any objection to the failure to provide discovery must be, where known, raised, and ruled on, prior to the final pre-trial date. The Court will not reschedule trial dates after the final pre-trial on allegations of missing discovery where no order requiring the production was sought at, or prior to, the final pre-trial conference. Nothing in the Supreme Court Rules precludes timely objection to discovery violations.

V. PRE-TRIAL DIVERSION PROGRAM

A. The 12th Judicial District maintains a Pre-trial Diversion process. Pre-trial Diversion may take two (2) different forms:

1. Deferred Prosecution – In Deferred Prosecution, the Defendant and the Commonwealth agree, with Court approval, to pass the case on the active docket for a period not to exceed 24 months. The Defendant must waive his/her right to a speedy trial, for the period of diversion only, and be subjected to whatever conditions are agreed upon between the parties and/or imposed by the Court. At the end of the period, absent evidence at a hearing if necessary, that there has been a violation of the terms of the deferred prosecution, the Court shall, on joint motion, dismiss the charges. Absent agreement to the contrary that dismissal will be "with prejudice."

2. Post Plea Diversion – In Post Plea Diversion, the Defendant and the Commonwealth must agree on a plea and a recommended sentence. That proposal is presented, in writing, to the Court on approved forms available from the Court's Clerk, along with the recommendation that the case be diverted. In the event that the Court accepts the Diversion, the plea shall enter, but no

sentencing will occur at that time. The Court shall impose such terms, including fees, as were agreed, or as the Court deems appropriate. Sentencing will only occur in the event that, following proper notice and hearing, the Court finds a violation of the Diversion Agreement. In the event of a successful completion, the Court shall, on a joint motion, dismiss the charges, unless another disposition is called for in the initial diversion agreement. Absent agreement to the contrary that dismissal will be "with prejudice."

The Post Plea Diversion process can require monitoring by the Department of Pretrial Services and will include all the rules and regulations associated with that program, including fees. In some instances, the Court may authorize unmonitored post plea diversion.

3. A more detailed explanation of the diversion process and the forms are contained in the appendix to these rules. This appendix also includes the Rules and Regulations of the Department of Pretrial Services Diversion Program.

VI. PRETRIAL CONFERENCES IN CRIMINAL CASES

Pretrial conferences shall be held as a matter of course in all criminal cases in which a jury trial has been requested, and upon the motion of any party or upon the Court's order in all other cases. The attorney for the defendant shall be in attendance at the pretrial conference. At the conclusion of the pretrial conference, the case shall be: 1) disposed of by pleas; 2) set for trial on a date certain; 3) scheduled for any pretrial hearings necessitated by the Pretrial Conference; or, 4) continued for an additional Pretrial Conference, on good cause shown by either the Commonwealth, the Defendant, or on joint motion of both.

VII. PLEA BARGAINING

As it is an established practice in the Court, and resolves some cases without the necessity of a trial, plea bargaining is not discouraged by the Court. However, all plea bargaining should be completed by the conclusion of the final pretrial conference. The Court reserves the right to refuse to accept plea agreements after the final pretrial conference absent a showing, ex parte if necessary, that there is new or additional information presented by either party that was unavailable at the Final Pretrial Conference.

VIII. TIMING AND NOTICE FOR GUILTY PLEAS

In order to allow the Clerk to properly summons a jury and to avoid summoning a jury needlessly, Counsel for the defendant and the Commonwealth shall certify to the Court and the Clerk no later than three (3) business days prior to the trial that there will not be a trial.

The Court may waive this rule for good cause shown, and allow a plea, either by agreement or without recommendation. For purposes of this rule only, a teleconference with the Court and both Counsel may be held after the final pre trial conference and prior to the date of trial. The Court's notes shall serve as the official record of the teleconference, subject to any supplemental pleadings necessary to clarify the record. To request a good cause exception on the Trial date, the Defendant and both Counsel shall be present in open Court.

IX. JURY PAYMENTS AS COSTS

A criminal defendant who fails to appear at his/her scheduled jury trial may be ordered to pay the full cost of all jury fees. Failure of counsel to notify the Clerk in time for the Clerk to notify the jury not to appear may result in the full cost of all jury fees being imposed as part of the sentence or otherwise. The Court may consider whether the failure to notify the Clerk was due to the actions of the Client or Counsel in determining how to assess the jury fee.

X. INSTRUCTIONS TO JURIES

In both civil and criminal cases, all parties shall submit proposed instructions to the Court not later than the morning of trial. Notwithstanding the foregoing, the parties may tender agreed instructions to the Court.

XI. SHOCK PROBATION

A. Counsel requesting Shock Probation shall file the appropriate Motion pursuant to KRS 439.265.

B. On the scheduled date for the Motion, the Court may either take the Motion under submission or may, in the Court's discretion, schedule a hearing.

C. Defendants will not routinely be transported for the initial hearing date. Only if, in the Court's discretion, a hearing is scheduled, will the defendant be transported to Court consistent with RCr 3.20.

XII. WITHDRAWAL OF ATTORNEYS

In any case in the 12th Judicial District, an attorney who has appeared at any stage of the proceeding in the case who has been noted as attorney of record by the Clerk, may not thereafter withdraw as attorney of record in that pending case or fail to appear at any subsequent proceeding in that case, unless the attorney has appeared before the Court seeking permission to withdraw as counsel of record. If a notice of appeal has been filed of record in a civil or criminal matter, the attorney will not be permitted to withdraw as attorney of record. If the Court, at a hearing, grants the motion, the attorney permitted to withdraw as attorney of record shall tender to the Court an order permitting the attorney's withdrawal.

In all divisions of the Court, the motion shall be in writing and properly noticed for hearing before the Court. In criminal and traffic cases, the notice to the defendant/client shall inform the defendant that he/she must personally appear in court for the hearing on the motion to withdraw if substitute counsel has not entered an appearance by that time.

XIII. SMALL CLAIMS PRACTICE

Practice before the Small Claims division of District Court shall be in conformity with the provisions of KRS 24A.200 to KRS 24A.360 inclusively.

Settlement reached prior to trial shall be in writing and done in conformity with the settlement agreement form obtainable from the office of the District Court Clerk of the Small Claims division.

XIV. DEFAULT JUDGMENTS AND AGREED ORDERS

A. A party seeking a judgment by default shall first file a written notice for such a judgment. All such motions shall be heard ex parte and shall not be scheduled on Motion Day dockets. The motions shall be accompanied by an affidavit in full compliance with 50 USCA, App. Sec. 520, and the certificate required by CR 55.01. The Judgment per se, when presented to the Court, must also contain a statement by the attorney for the party seeking such a judgment conforming with the certificate required by CR 55.01.

B. Agreed Orders and judgments shall be submitted to the Court at any time, at the convenience of the Court, and shall not be placed on any Motion Day docket.

XV. APPEALS FROM DISTRICT COURT


A. If a party disagrees with the Judge's decision, the party may appeal his/her case to Circuit Court. A notice of appeal must be filed with the Circuit Court Clerk to appeal the case to Circuit Court.

B. Upon request, the Circuit Court will provide you a copy of Civil Rule 72 as to when and how the appeal is to be taken. For appeals from small claims case, a small claims booklet outlining the appeal may be obtained from the Circuit Court Clerk.

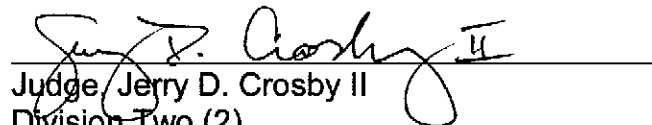
XVI. EFFECTIVE DATE

These rules shall apply with full force and effect to all actions filed or pending in the 12th Judicial District immediately upon approval of the Chief Justice of the Supreme Court. The foregoing rules having been adopted they are hereby certified to the Chief Justice of the Supreme Court for approval on this day of.

Dated: 10/28/08



Judge, Diana E. Wheeler
Division One (1)



Judge, Jerry D. Crosby II
Division Two (2)

APPENDIX A

DISTRICT COURT SCHEDULE OF REGULAR WEEKLY DOCKET

Monday-Oldham County

- 9:00 a.m. Traffic Arraignments, Jail Arraignments and Minor Misdemeanor Arraignments
- 1:00 p.m. Traffic Arraignments, Jail Arraignments and Minor Misdemeanor Arraignments
- 1:30 p.m. Waivers of Extraditions
- 2:30 p.m. Traffic Bench Trials

Monday-Henry County

- 9:00 a.m. Traffic Arraignments/Pretrial Conferences, Misdemeanor Arraignments/Pretrial Conferences and Felony Arraignments
- 10:30 a.m. Jail Arraignments
- 1:00 p.m. Traffic Arraignments/Pretrial Conferences, Misdemeanor Arraignments/Pretrial Conferences and Felony Arraignments/Preliminary Hearings

Tuesday-Oldham County

- 9:00 a.m. Civil Docket, Probate Docket, Forcible Detainer Docket and Mental Health Docket
- 10:30 a.m. Small Claims Docket
- 1:00 p.m. Bench Trials or Mental Health Disability Jury Trials

Tuesday-Trimble County

- 9:00 a.m. Traffic Arraignments/Pretrial Conferences, Misdemeanor Arraignments/Pretrial Conferences, Felony Arraignments/Preliminary Hearings and Jail Arraignments
- 10:15 a.m. Probate Docket
- 10:30 a.m. Civil Docket and Small Claims Docket
- 11:00 a.m. Juvenile Docket
- 1:00 p.m. Bench Trials or Mental Health Disability Jury Trials

Wednesday-Oldham County

- 9:00 a.m. DUI Arraignments/Pretrial Conferences, Misdemeanor Arraignments/Pretrial Conferences, Felony Arraignments and Jail Arraignments
- 1:00 p.m. Misdemeanor Arraignments/Pretrial Conferences, Felony Arraignments/Preliminary Hearings and Public Defender Docket
- 2:30 p.m. Suppression Hearings

Wednesday-Henry County

- 8:30 a.m. Juvenile Docket (2nd & 3rd Wednesday of every month)
- 9:00 a.m. Criminal Arraignments/Pretrial Conferences and Small Claims Docket
- 10:00 a.m. Forcible Detainer Docket
- 11:00 a.m. Probate Docket and Mental Health Docket
- 1:00 p.m. Bench Trials and Mental Health Disability Jury Trials

Thursday-Henry, Oldham and Trimble County

- 8:30 a.m. Bench Trials and Jury Trials

Friday-Oldham County

- 8:30 a.m. Bench Trials and Jury Trials
- 9:00 a.m. Juvenile Docket (1st & 2nd Friday of every month)

Friday-Henry and Trimble County

- 8:30 a.m. Bench Trials and Jury Trials

APPENDIX B

PRE-TRIAL DIVERSION

12th Judicial District

HENRY-OLDHAM-TRIMBLE COUNTIES

Administrative Office of the Courts
Pretrial Services District Court Diversion
Program

COURT RULES

I. ELIGIBILITY REQUIREMENTS

- A. All persons charged in District Court with the commission of a misdemeanor or violation shall be eligible for participation in the Administrative Office of the Courts' Pretrial Services Diversion Program (Program), as an alternative to criminal prosecution, subject to the following conditions and exceptions:
 - 1. The charge of KRS Chapter 189A shall not be diverted.
 - 2. A felony charge shall not be diverted.
 - 3. The County Attorney and the defendant must consent to participation in the Program. If the county attorney refuses to consent to a defendant's participation in the Program, he or she shall state on the record the reasons therefor.
 - 4. No person shall be eligible for pretrial diversion more than once in a five (5) year period.
 - 5. Where reasons of an extraordinary nature are presented which warrant consideration of a person for participation in the Program, notwithstanding his/her lack of eligibility by virtue of one or more of the above set out exclusions, that person may be considered eligible for participation in the Program by the trial judge.
- B. Nothing in this rule shall be deemed to limit the authority of the county attorney to withdraw criminal prosecution in any given case.

II. PARTICIPATION

- A. Upon the consent of both the county attorney and the defendant, the trial judge shall approve participation in the Program for any individual who meets the eligibility requirements established in Section I above unless the trial judge, in his or her discretion believes that:

1. There is a substantial risk that the defendant will abscond from the jurisdiction of the Court prior to fulfillment of the terms of the diversion contract.
 2. There is a substantial risk that the defendant will commit another crime prior to fulfillment of the terms of the diversion contract.
 3. The defendant is in need of correction treatment that can be provided most effectively by commitment to the county jail or a suspended jail sentence.
 4. Participation in the Program would unduly depreciate the seriousness of the defendant's alleged crime.
- B. Upon approval for participation in the Program, the defendant must sign a statement waiving his or her right to a speedy trial. Prior to signing such statement the defendant shall be given the opportunity to consult with an attorney if he or she so desires.
- C. All persons participating in a pretrial diversion program shall be required to enter an *Alford* plea or a plea of guilty as a condition of such participation.
- D. All Program records and all statements made by a defendant to the diversion officer regarding the contract shall be privileged; shall not be admissible or discoverable for any purpose; shall be exempt from subpoena; and, shall be deemed confidential. However, Program staff, the trial judge, and the chief district judge may access the information for purposes of Program review, monitoring, and supervision. The information shall not be released to any other person or entity without prior written consent of the trial judge or the defendant. Nothing in this paragraph shall be deemed to prohibit release of information to the victim regarding a defendant's participation in the Program.
- E. The fee for participation in the Program shall be in the amount as established by the Administrative Office of the Courts. The diversion officer may assess the fee on a sliding scale based upon ability to pay or waive the fee entirely in the case of indigence.

III. THE DIVERSION CONTRACT

A. Referral to Pretrial Services

1. Upon referral to the Program, the defendant shall meet with a diversion officer to establish a formal contract which species the court ordered conditions, the referral services to be used, the length of the contract, and, if required, the need for the defendant to make restitution or perform community service. The Contract shall commence upon approval by the trial judge.
2. Following completion of the diversion contract, the diversion officer shall submit a pretrial report and the contract for approval to trial judge. The report shall contain basic pretrial information, record of any past offenses and conviction, record of any prior participation in the diversion program or similar program, employment status, length of residence in the area, and any other information necessary to determine eligibility and appropriateness of approval to participate in the Program.

B. Individual contract lengths shall be determined by the trial judge not to exceed twenty-four (24) months.

C. The program participant shall be required to comply with all provisions of the diversion contract. If the Program participant fails to comply with the condition of the contract, the diversion officer shall refer the participant to the trial judge for a determination of either termination or modification. The trial judge shall enter an order reflecting said determination. As with the original diversion contract, the participant must agree to the contract modifications, if any, prior to reinstatement. Upon termination for non-compliance, the County Attorney may re-initiate prosecution of the defendant upon the original charge(s).


D. A program Participant may terminate the contract at any time by submitting a written statement to the diversion officer or the trial judge. Where termination is prior to expiration of the contract period, the diversion officer shall refer the case to the County Attorney for resumption of prosecution.

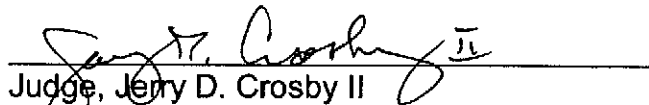
E. Upon successful completion of the diversion contract, the charge subject to the contract shall be dismissed, and all official records shall bear the notation "dismissed-diverted".

IV. COUNTIES

The Administrative Office of the Courts Pretrial Services Diversion Program shall begin initially in Oldham County. As the need or circumstances dictate, the Program may be extended to Henry and Trimble Counties by the Court.

Dated: 10/28/08


Judge, Diana E. Wheeler
Division One (1)


Judge, Jerry D. Crosby II
Division Two (2)